IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5924 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANISH KHANNUBHAI PARMAR

Versus

STATE OF GUJARAT

Appearance:

MR SATYEN B RAWAL for Petitioners

MR ND GOHIL, ADDL. PUBLIC PROSECUTOR for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 28/03/2000

ORAL JUDGEMENT

1. I have heard the learned counsel for the petitioners, perused the record of the case and the documents filed during the course of hearing.

2. This is an application u/s 482 of the Criminal procedure Code with a view to quash the FIR lodged by the respondent No.2 herein, which is registered as Crime Register No. I - 271/98 with the Bhavnagar police station on the ground that the same does not disclose any cognizable offence, and that on the facts and circumstances of the case, it amounts to abuse of the process of Court, by suppressing material facts which were within the knowledge of the complainant.

3. The applicants herein are husband and wife respectively, who were named as accused No.1 and 2 in respect of the FIR filed by respondent No.2 herein.

3.1 The applicants have established by appropriate documentary material on record before me that they were married on 16th of November 1998, the certificate representing the registration of the marriage is at Annexure `A' to the petition. On the very next day, namely on 17th of November 1998, applicant No.2, who is the daughter of respondent No.2 - the complainant, swore an affidavit to the effect that, on the previous day i.e. on 16th of November 1998, she had married the applicant No.1 at Vijapur in the temple of Radha Krishna according to Hindu Rites pertaining to marriage, that she has entered into this marriage without any coercion or pressure, that she has not brought any goods, articles or cash from her parental house, that she is of adult age, and that she has entered into this marriage voluntarily and entirely of her own free wish.

3.2 The applicant No.2 being the daughter of respondent No.2 - the complainant, being aware of the family background, and being aware of her father's temperament, and being aware of the fact that her father would strongly disapprove of her marriage outside the community and religion, feared physical assault and injury at the hands of her father and his associates. Thus, the accused No.2 immediately on the next day after her marriage, on 17th of November 1998, gave an application to the District Superintendent of Police, Bhavnagar, seeking appropriate police protection, setting out the background of her social status, and her marriage to accused No.1, and her apprehension regarding her father (the complainant). She specifically sets out in the said application that her father along with her brothers and other associates are likely to cause physical injury and grief to the applicants. These are the averments made in the said application, after setting out in detail the facts and circumstances pertaining to

their voluntary marriage.

4. On a broad consideration of the averments made in the FIR, as also the appropriate material placed on record of the present application, it becomes obvious that the complainant being the father of the girl accused No.2, was strongly opposed to the marriage of his daughter with accused No.1, which marriage was not only an inter-caste marriage, but was an inter-religious marriage, that is to say, a Muslim girl married a Hindu boy. It is also possible that, on or about the time when the FIR came to be lodged, he may not have been aware or did not take the opportunity of looking into the mind and heart of his own daughter, to ascertain where her true happiness lies.

5. Learned counsel for the applicants places on record of the present application two affidavits in the original duly notarized, by each of the two brothers of accused No.2, that is to say, the two sons of the complainant. Each of the two separate affidavits in substance states that the deponent is the brother of the accused No.2, that his sister has married accused No.1 on 16th of November 1998 by Hindu religious rites, and the said marriage has been registered, that his sister was of adult age on the said day, and that she has married accused No.1 entirely of her own free will after due regard to the pros and cons in respect of her future prospects, that the deponent is aware that his father (the complainant) had filed an FIR against his sister and brother in-law. As per the assertions made in the said affidavit, the contents of the FIR are far from the truth, and that it is motivated only with a view to harass his sister. Each of the two deponents independently asserts that the assertion made in the FIR to the effect that his sister has taken away Rs.3,000/- from the home of her father, or that his sister is not entirely of sound mind, are assertions which are not correct.

5.1 The affidavit of one of the brothers Aftab Ahmed, further states that he got married on 19th of February 2000, and the said marriage was attended by his sister and brother in-law, that his sister has achieved complete satisfaction as a consort of his brother in-law, and that both are entirely happy in their marriage. The said affidavit further reiterates that his sister has delivered a daughter on 18th of November 1999, and that therefore, the complainant (the father of the deponent) does not have any further cause for complaint.

6. The affidavits of both the brothers of accused No.2 (the two sons of the complainant) reiterate in their respective affidavits that, in view of the facts stated and asserted in their affidavits, it would be in the interest of the married couple as well as that child, that the complaint filed by their father be quashed.

7. On the facts discussed hereinabove, as they are found on the record of the present application, I have no doubt that the FIR was filed by the complainant merely out of a sense of outrage, anger and annoyance with his daughter for having married outside the caste and community and without his consent. It would also appear that at present the complainant might have become reconciled to the situation, one of the indicators being that he has chosen to remain absent in the present proceedings, although he has been served.

8. However, on the facts and circumstances of the case as they appear on record, I have no doubt that the FIR as filed, only discloses the enraged mind of a father, without regard to the true facts and circumstances, which have been deliberately and intentionally suppressed. This by itself is sufficient to hold that the FIR as filed amounts to abuse of the process of the Court.

9. In the premises aforesaid, it is found and held that the FIR in respect of Crime Register No. I 271/1998 registered with Bhavnagar police station is hereby quashed and set aside.

10. Rule is made accordingly made absolute. Interim relief stands vacated.

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